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17 **IN THE UNITED STATES DISTRICT COURT  
18 FOR THE DISTRICT OF ARIZONA  
19 PHOENIX DIVISION**

20 George Calcut, *et al.*,

21 Case No. 2:22-cv-01215

22 Plaintiffs,

23 v.  
24 **DEFENDANTS'  
25 CONTROVERTING STATEMENT  
26 OF FACTS IN SUPPORT OF  
27 THEIR RESPONSE TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

28 Paramount Residential Mortgage Group  
Incorporated, *et al*

Defendants.

15 Defendants Paramount Residential Mortgage Group, Inc. (“PRMG”) and Cenlar  
16 FSB, (“Cenlar”) (collectively “Defendants”) pursuant to Federal Rule of Civil Procedure  
17 56 and Local Rule 56.1(b), respectfully submit their Controverting Statement of Facts, in  
18 response to Plaintiff’s Statement of Facts [ECF 45] and in support of their  
19 contemporaneous Response to Plaintiffs’ Partial Motion for Summary Judgment.  
20

21 With respect to each of the numbered paragraphs in Plaintiffs’ Statement of Facts,  
22 Defendants respectfully state as follows:

23 1. Defendants do not dispute that Cenlar, as sub-servicer, is not a party to the subject  
Note and Mortgage, nor that Plaintiffs did not choose Cenlar to sub-service their loan.  
24 Defendants dispute Paragraph 1 to the extent it asserts a legal conclusion that Cenlar is a  
25 “debt collector” with respect to this loan, as defined by law.  
26  
27  
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1       2. Defendants do not dispute the subject loan was a VA loan. The remainder of  
2 paragraph 2 contains a statement of law, to which no response is necessary; to the extent a  
3 response is required from Defendants, Defendants do not dispute that Cenlar services VA  
4 loans in accordance with VA regulations.<sup>1</sup>

5       3. Not disputed.

6       4. Defendants do not dispute letters sent out to Plaintiffs contained the following  
7 notice:

8             Available options may vary depending on investor guidelines.  
9             Additional eligibility requirements and documentations may  
10            be required. Please be in touch with us before making any  
11            decisions. We are monitoring investor guideline changes to  
12            ensure we are considering all available options for you.”<sup>2</sup>

13       See **Ex. A-4** (11.04.2020 Letter); **Ex. A-6** (05.15.2021 Letter).

14       5. Defendants do not dispute that, as PRMG’s sub-servicer with regards to loss  
15 mitigation functions, Cenlar was expected to comply with the VA’s regulations and  
16 guidelines.<sup>3</sup>

17       6. Disputed. In correspondence sent to Plaintiffs, Defendants stated that deferral of  
18 payments *may* be an option available to them but “available options may vary depending  
19 on investor guidelines.”<sup>4</sup> This option was explicitly stated in referenced to programs  
20 announced by Fannie Mae and Freddie Mac that did not apply to Plaintiffs’ loan. See **Ex.**  
21 **A-4** (11.04.2020 Letter); **Ex. A-5** (05.15.2021 Letter); **Ex. A-6** (05.15.2021 Letter).

22       7. Defendants do not dispute that on May 28, 2021, Plaintiff George Calcut made a

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23       <sup>1</sup> See Pls.’ Statement of Facts App. at 77 (Dep. of R. Crawford 46:17–23).

24       <sup>2</sup> See Pls.’ Statement of Facts App. at 116–136.

25       <sup>3</sup> See Pls.’ Statement of Facts App. at 42 (Dep. of R. Crawford 83:20–25).

26       <sup>4</sup> See Pls.’ Statement of Facts App. at 116–136 (emphasis added).

1 phone call to PRMG’s customer service line, in which Cenlar’s representative stated that  
2 he could initiate a request for a “streamline modification.”<sup>5</sup> Defendants do not dispute  
3 Plaintiff George Calcut, spoke to a Cenlar representative on July 17, 2021; however  
4 Defendants dispute Plaintiffs’ misrepresentation of the contents of the call as the  
5 representative did not promise Plaintiffs a deferment of their payments and instead  
6 acknowledged that Plaintiffs would *not* receive a deferment.<sup>6</sup> Defendants further dispute  
7 Plaintiff’s statement that “PRMG admits it does not know what a streamline modification  
8 is and does not know what is required for a borrower to be eligible for a CARES Act  
9 Forbearance” as it mischaracterizes the testimony of PRMG’s corporate representative.<sup>7</sup>  
10

11 8. Defendants dispute this statement as it mischaracterizes the PRMG corporate  
12 representative’s testimony.<sup>8</sup>  
13

14 9. Disputed. Plaintiffs admitted to ending their forbearance period so they could seek  
15 a refinance that would allow them to “cash out their mortgage.” **Ex. A** (D. McCormick  
16 Aff.) at ¶ 12.<sup>9</sup>  
17

18 10. Disputed. Plaintiffs were offered and accepted a VA Disaster Modification as a  
19 loss mitigation alternative. *See Ex. A-7* (06.01.2021 Trial Payment Plan Letter); **Ex. A-9**  
20 (Executed Loan Modification). Plaintiffs voluntarily ended their forbearance and had the  
21 option to keep their existing loan terms. Further, Plaintiffs were informed they may  
22 appeal Cenlar’s decision to offer a VA Disaster Modification but elected not to do so. **Ex.**  
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25 <sup>5</sup> *See Pls.’ Statement of Facts App. at 139 (Transcription of 05.28.2021 call).*

26 <sup>6</sup> *See Pls.’ Statement of Facts App. at 143 (Transcription of 07.17.2021 call).*

27 <sup>7</sup> *See Pls.’ Statement of Facts App. at 49 (Dep. of R. Crawford 113:6–19).*

28 <sup>8</sup> *See Pls.’ Statement of Facts App. at 48 (Dep. of R. Crawford 107:23–108:9).*

<sup>9</sup> *See also Pls.’ Statement of Facts App. at 139 (Transcription of 05.28.2021 call).*

1       **A-7** (06.01.2021 Trial Payment Plan Letter); *see supra* SOF 30.

2       11. Defendants do not dispute that the trial payment plan for the VA Disaster  
3       Modification offered to Plaintiffs on June 1, 2021 required three trial payments in the  
4       amount of \$1,367.78 per month, and contemplated a projected interest rate of 3.5%. The  
5       permanent modification offered to and accepted by Plaintiffs provided for an interest rate  
6       of 3.375%. *See Ex. A-9.*

7  
8       12. Defendants dispute the statement as it implies that Plaintiff George Calcut  
9       requested an extension to his CARES Act Forbearance at the time of the referenced call.  
10      Plaintiff George Calcut states in the call “I’m requesting termination [of] forbearance at  
11      the present time.”<sup>10</sup>

12  
13      13. Defendants dispute that Plaintiff George Calcut was promised that his interest rate  
14      would stay the same. On the referenced call, Cenlar’s representative initially stated that  
15      the interest rate “should” stay the same but corrected this later in the call and told Mr.  
16      Calcut that his interest rate could increase. At the time of the call, Plaintiffs were in  
17      possession of Defendants’ letter projecting an increase of their interest rate to 3.5%.

18  
19      14. Defendants do not dispute that in the referenced call, Cenlar’s representative  
20      informed Plaintiff George Calcut that his interest rate could increase in the modification  
21      after speaking with her supervisor, and despite not being initially aware that this was the  
22      case.

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24      15. Defendants do not dispute the permanent mod terms as stated by Plaintiffs and in  
25      the referenced September 3, 2021 letter, and instructed Plaintiffs that they could accept by

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28      <sup>10</sup> *See Pls.’ Statement of Facts App. at 186 (Transcription of 12.06.2021 Call).*

1 submitting executed copies of the modification documents by September 17, 2021. The  
2 “monthly payment” amount stated by Plaintiffs is inclusive of principal, interest, and  
3 escrow.  
4

5 16. Disputed. At the time that Plaintiffs were considered for a modification and were  
6 offered the VA Disaster Modification on June 1, 2021, VA regulations did not provide for  
7 either a partial claim or a deferment option. *See* 86 FR 282692-01 (2008) at 6301  
8 (concluding that a partial claim program was not authorized by Congress and therefore not  
9 feasible); 38 CFR § 36.4310(a) (requiring loans to be amortized and prohibiting final  
10 installments exceeding two times the average of the proceeding installments). The VA  
11 Final Rule authorizing a partial claim program became effective on July 27, 2021, nearly  
12 two months after Defendants extended an offer for a VA Disaster Modification to  
13 Plaintiffs. Once authorized, the partial claim program was not mandatory, and Cenlar did  
14 not in fact offer the program until October 2021. *See Ex. A.*, Diane McCormick Affidavit  
15 at ¶ 18. 38 CFR § 36.4310(a) has never been rescinded. Defendants acknowledge that  
16 during certain periods of the COVID-19 pandemic, the VA stated that it would  
17 temporarily waive enforcement of the regulation against servicers who wished to offer  
18 deferment as a COVID-19 loss mitigation option. These statements did not have the force  
19 and effect of law, and Defendants dispute that they were required to rely on such waiver.  
20  
21

22 17. Disputed for the reasons stated in response to Paragraph 16, and because Plaintiffs  
23 mischaracterize the contents of the referenced phone call, which did not state that a  
24 disaster modification was the only possible foreclosure alternative.<sup>11</sup>  
25  
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28 <sup>11</sup> *See* Pls.’ Statement of Facts at Appx. at 158.

1       18. Defendants do not dispute the date in which the VA announced the COVID-19  
2       Veterans Assistance Partial Claim Program; however, Defendants dispute COVID-19  
3       VAPCP was available to Plaintiffs at the time they requested loss mitigation assistance as  
4       it has not yet been implemented by Cenlar at the time. *Id.*; *see also* **Ex. A-7** (showing  
5       Plaintiff's were reviewed for and approved for a Disaster Modification before the  
6       COVID-19 VAPCP became effective).

7  
8       19. Defendants do not dispute the content of the referenced VA circular. Defendants  
9       dispute Plaintiffs interpretation of the circular, and dispute that the circular had the force  
10      and effect of law.

11  
12      20. Defendants dispute this statement to the extent it misconstrues Cenlar's corporate  
13      representative's testimony, and relies on an improper deposition question regarding a  
14      matter of legal interpretation.<sup>12</sup> Additionally, Defendants extended a trial payment plan  
15      for a VA Disaster Modification on June 1, 2021, prior to the date of the referenced  
16      circular. *See Ex. A-7* (06.01.2021 Trial Payment Plan Letter).

17  
18      21. Defendants do not dispute that because the Plaintiffs were offered a VA Disaster  
19      Modification, they were not thereafter evaluated for or offered other loan modification  
20      alternatives. Defendants dispute that they were required to follow the "waterfall"  
21      referenced in VA Circular 26-21-33, either at the time they extended an offer of a VA  
22      Disaster Modification or afterward.

23  
24      22. Defendants do not dispute Plaintiff George Calcut filed a complaint with the CFPB  
25      on July 24, 2021. Further, Defendants do not dispute PRMG timely responded to George

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28      <sup>12</sup> See Pls.' Statement of Facts App. at 84 (Dep. of R. Crawford 76:1–17).

1 Calcut's denying any error as to Plaintiff's loan modification. *See Ex. A-12* (08.05.2021  
2 CFPB Complaint Response). Defendants dispute the characterization of PRMG's  
3 statement regarding deferral programs for the reasons stated in Paragraph 16.  
4

5 23. Defendants do not dispute that Mr. Calcut submitted both informal complaints and  
6 complaints to the CFPB, as stated in Paragraph 23. Defendants dispute the  
7 characterization of PRMG's statement regarding deferral programs for the reasons stated  
8 in paragraph 16. Defendants dispute the statement regarding the deposition testimony of  
9 PRMG's corporate representative, as it relies on an improper deposition question  
10 regarding a legal opinion.

12 24. Defendants do not dispute that for the month of July 2021, Cenlar mistakenly  
13 reported Plaintiffs' loan ad delinquent. However, on August 16, 2021, Cenlar submitted  
14 an ACDV response to correct the reporting of delinquency for July 2021. *See Ex. A-11*  
15 (ACDV Reports). On August 18, 2021, Trans Union issued a credit report showing the  
16 credit reporting issue had been corrected and the loan was reported as current and "paying  
17 as agreed." *See Ex. B* (Trans Union Documents). On August 25, 2021, Experian issued a  
18 credit report showing the credit reporting issue was corrected, and the loan was reported  
19 as current. *See Ex. C* (Experian Documents). On October 28, 2021, Equifax issued a  
20 report showing the credit reporting issue had been corrected, and the loan was reporting as  
21 current. *See Ex. D* (Equifax Documents). Defendants dispute Plaintiffs' statement  
22 regarding PRMG's deposition testimony as it relies on an improper deposition question  
23 regarding a legal opinion.

27 25. Not disputed.  
28

1       26. Defendants do not dispute a letter to Plaintiff George Calcut was generated on or  
2 around August 4, 2021, stating that an inaccurate account status had been reported and  
3 that a correction was being submitted. Defendants dispute Plaintiffs have submitted  
4 admissible evidence as to Equifax's October 13, 2021. Credit Report, which was not  
5 produced by Equifax in response to Plaintiffs' subpoena. Defendants further dispute any  
6 allegation that Cenlar was continuing to report adverse credit as of October 2021, which is  
7 not supported by any facts or evidence in the record. *See Ex. A.*, Diane McCormick  
8 Affidavit at ¶ 16.  
9

10      27. Disputed for the reasons stated in Paragraph 26.  
11

12      28. Not disputed.  
13

#### **ADDITIONAL STATEMENT OF FACTS**

14      29. Plaintiffs requested and were allowed to put their loan in forbearance in November  
15 2020. Plaintiffs requested and were given two extensions on their forbearance period in  
16 March 2021, and May 2021. *See Ex. A* (D. McCormick Aff.) at ¶ 11; **Ex. A-4**  
17 (11.04.2021 Letter); **Ex. A-5** (03.15.2021 Letter), and **Ex. A-6** (05.11.2021 Letter).  
18

19      30. On May 28, 2021, Plaintiffs contacted Cenlar stating they were interested in ending  
20 the forbearance and inquiring about loss mitigation options which would allow them to  
21 begin making payments once again. *See Ex. A* (D. McCormick Aff.) at ¶ 12.<sup>13</sup>  
22

23      31. On June 1, 2021, Cenlar sent Plaintiffs a letter confirming they were approved for a  
24 trial payment plan, which, if completed would make Plaintiffs eligible for VA Disaster  
25 Modification. *See Ex. A-7* (06.01.2021 Trial Payment Plan Letter). The letter provided the  
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28      <sup>13</sup> *See also* Pls.' Statement of Facts App. at 139 (Transcription of 05.28.2021 call).

1 projected loan terms for the loan modification including the estimated new principal  
2 balance, an estimated an interest rate of 3.5%, and projected principal and interest  
3 payments. *Id.*

5 32. The letter further provided the following statement with regard to Plaintiffs' right  
6 to appeal Plaintiffs' loss mitigation eligibility:

7 **Right to Appeal**

8 You have the right to appeal our determination not to offer  
9 you the loan modification Trial Period Plan(s) listed above. If  
10 you would like to appeal, you must contact us in writing at the  
11 address provided below, no later than 06/25/2021, and state  
12 that you are requesting an appeal of our decision. You must  
13 include in the appeal your name, property address, and  
14 mortgage loan number. You may also specify the reasons for  
15 your appeal, and provide any supporting documentation. Your  
16 right to appeal expires 06/25/2021. Any appeal requests or  
17 documentation received after 06/25/2021 may not be  
18 considered.

19 If you elect to appeal, we will provide you a written notice of  
20 our appeal decision within 30 calendar days of receiving your  
21 appeal. Our appeal decision is final and is not subject to  
22 further appeal.

23 If you elect to appeal, you do not have to accept this Trial  
24 Period Plan until resolution of the appeal. If we determine on  
25 appeal that you are eligible for a different foreclosure  
26 prevention program, we will send you an offer for that  
27 program. In that case, you will have 14 calendar days from the  
date of the appeal decision to indicate your intent to accept  
either the Trial Period Plan offer (which may be revised to  
reflect new Trial Period Plan payment due dates and payment  
amounts if you have not already accepted it) or the new offer.

28 If you wait to accept the current offer until after receiving our  
appeal decision, your loan will become more delinquent. Any  
unpaid interest, and other unpaid amounts, such as escrows for  
taxes and insurance, will continue to accrue on your mortgage  
loan during the appeal, and will be added to the balance of  
your loan if permitted by applicable law.

1             Appeal documents may be sent:  
2              By Mail to: Loss Mitigation Department  
3              PO Box 77408  
4              Ewing, NJ 08628-6408  
5              or via Fax to: Loss Mitigation Department  
6              (609) 718-2655

7              *See Ex. A-7 (06.01.2021 Trial Payment Plan Letter).*

8              33. Nonetheless, Plaintiffs did not appeal the decision and on September 15, 2021,  
9              accepted a permanent loan modification which capitalized past due amounts, extended the  
10             loan term, and increased the interest rate to 3.375%. **Ex. A-9** (Executed Loan  
11             Modification).

12             34. On September 18, 2021, in response to an additional credit dispute submitted by  
13             Plaintiff George Calcut, Cenlar again submitted an ACDV response showing the account  
14             was current and there was no past due amount for July 2021. **Ex. A-11** (ACDV Reports).

15             35. On May 31, 2022, Plaintiffs refinanced their loan with United Trust Bank  
16             ("UTB"). *See Ex. E* (UTB Mortgage). The new loan increased Plaintiffs' interest rate to  
17             4.75%. Plaintiffs paid off the Loan, paid off \$36,283.00 in credit card debt, and received  
18             \$101,297.72 in cash from the refinance. *Id.*; *see also Ex. F* (UTB Closing Disclosures),  
19             **Ex. G** (George Calcut Dep.) at 47:17–48:6.  
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Respectfully submitted,

s/ G. Benjamin Milam

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